IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15913 of 2003

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GREEN ROADWAYS - Petitioner(s)

Versus

RADHABEN J KADIA - Respondent(s)

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Appearance :

MR HASIT H JOSHI for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.

MR KISHOR M PAUL for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 23/06/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India the petitioner management has challenged the legality and validity of the ex-parte judgment and award dated 30th May 2002 in Reference

(LCJ) No. 309/1991 as well as the order passed by the Labour Court, Jamnagar, dated 15th September 2003 in Miscellaneous Application No. 6 of 2002.

2. It appears from the record that the respondent was serving with the petitioner and according to the respondent her services came to be terminated orally with effect from 3.1.1991 and therefore she raised an industrial dispute which was referred to the Labour Court, Jamnagar, for adjudication being Reference (LCJ) No. 309/1991. It appears from the record that though the petitioner engaged an advocate neither the learned advocate nor anybody remained present on behalf of the petitioner and therefore the Labour Court, Jamnagar, by its judgment and award dated 30th May 2002 passed the ex-parte award allowing the Reference directing the petitioner to reinstate the respondent with full backwages. It was the case of the petitioner that the said ex-parte judgment and award came to be received by the petitioner on 17.7.2002 and immediately on receipt of the same the petitioner had preferred an application under Rule 26(A) of the Industrial Disputes (Gujarat) Rules for setting aside the ex-parte judgment and award and to decide and dispose of the Reference on merits after giving opportunity to the petitioner. The Labour Court, Jamnagar, by its order dated 15.9.2003 dismissed the said application only on the ground that though sufficient opportunity was given to the petitioner they have neither submitted any reply nor

made any submission and therefore there was a total negligence on the part of the petitioner and nothing has been done after filing of the Vakalatnama. Being aggrieved and dissatisfied with the aforesaid orders the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Hasit H. Joshi, learned advocate appearing on behalf of the petitioner has vehemently submitted that as such the application submitted by the petitioner under Rule 26(A) of the aforesaid Rules for setting aside the ex-parte judgment and award was within the period of limitation and in fact it was the negligence on the part of the advocate who did not inform the petitioner and therefore for the fault and/or negligence on the part of the advocate the petitioner should not be made to suffer. It is submitted that on payment of some costs the Labour Court ought to have given one additional opportunity to the petitioner to contest the Reference on merits and the aforesaid fact has not been considered by the Labour Court while rejecting the application for setting aside the ex-parte judgment and award. He has submitted that some reasonable costs be awarded and requested to give one additional opportunity to the petitioner to contest the Reference on merits.

4. Shri Kishor Paul, learned advocate appearing for the respondent opposed the present Special Civil Application and has supported the order passed by the Labour Court, Jamnagar dated 15th September 2003 in dismissing the restoration application and also the ex-parte judgment and award passed by the Labour Court. He has submitted that when ample opportunity was given to the petitioner and nobody remained present at the time of deciding the Reference the Labour Court was justified in passing the ex-parte judgment and award and thereafter in rejecting the application for setting aside the ex-parte award and therefore it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the application for setting aside the ex-parte judgment and award was within the period of limitation. The ex-parte judgment and award came to be passed on 30th May 2002 and the same came to be received by the petitioner in the month of July 2002 and immediately the application came to be filed. It is the case on behalf of the petitioner that it was the Advocate who was negligent who did not inform the petitioner and that on imposition of certain costs the Labour Court ought to have granted an additional opportunity to the petitioner to contest the Reference on merits. The Labour Court has dismissed the application for setting aside the ex-parte award only on the ground

that sufficient opportunity was given to the petitioner. It is required to be noted that though opportunity was given the petitioner did not remain present and ex-parte award came to be passed. The Labour Court rather than dismissing the restoration application on technical ground, ought to have considered setting aside of the ex-parte judgment and award on imposition of costs and the said aspect has been lost sight by the Labour Court. There is no finding given by the Labour Court that there was a delay tactics adopted on behalf of the petitioner and that they were deliberately negligent. It is the case of the petitioner that they had engaged the advocate who did not inform the petitioner. Considering the aforesaid facts and circumstances, the Labour Court ought to have given one additional opportunity to the petitioner to contest the Reference on merits on imposition of some costs.

6. Under the circumstances, the impugned order passed by the Labour Court, Jamnagar dated 15th September 2003 in Miscellaneous Application No. 6/2002 as well as the ex-parte judgment and award passed by the Labour Court in Reference (LCJ) No. 309 of 1991 are required to be quashed and set aside and are quashed and set aside. The matter is remanded to the Labour Court, Jamnagar for deciding the Reference No. 309/1991 afresh after hearing the petitioner as well as the concerned workman. As there was negligent on the part of the petitioner by not

remaining present at the time when the Reference was decided and the respondent workman is required to contest the present Special Civil Application for no fault of him, the petitioner is required to pay a sum of Rs. 7500 [Seven Thousand Five Hundred] towards cost of the present proceedings as well as for getting the judgment and award quashed and set aside. Considering the fact that the alleged termination is of 1991 and the respondent workman is out of job, the petitioner shall pay Rs. 25,000 lumpsum towards wages for the period from the date of termination till passing of the ex-parte judgment and award without prejudice to their rights and contentions and subject to the ultimate outcome of the Reference (LCJ) No. 309/1991. On payment of Rs. 7500 towards the costs and Rs. 25000 lumpsum towards part of the backwages within the period of one month from today, the ex-parte judgment and award passed by the Labour Court, Jamnagar in Reference (LCJ) No. 309/1991 as well as the order passed by the Labour Court, Jamnagar in Misc. Application No. 6/2002 are quashed and set aside. It is, however, made clear that the aforesaid payment of Rs.25000 lumpsum towards part of backwages shall be subject to ultimate outcome of the Reference (LCJ) No. 309/1991. The Labour Court, Jamnagar is directed to decide and dispose of the Reference as early as possible preferbly within the period of 9 months from the date of receipt of this order. Rule is made absolute.

Rmr. [M.R. Shah, J.]